



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|-----------------------------------|---|---------------------|
| In re patent application of: |) | Before the Examiner |
| Thomas Zdeblick et al. |) | Julian W. Woo |
| |) | |
| Application Serial No. 10/644,252 |) | Group Art Unit 3731 |
| |) | |
| Filed August 20, 2003 |) | Ref. No. PC242.38/ |
| |) | 4002-3378 |
| |) | |
| INTERBODY FUSION DEVICE AND |) | November 12, 2004 |
| METHOD FOR RESTORATION OF |) | |
| NORMAL SPINAL ANATOMY |) | |

TERMINAL DISCLAIMER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Sir:

Petitioner, SDGI Holdings, Inc., having a place of business at 300 Delaware Avenue, Suite 508, Wilmington, Delaware 19801, is the owner of one hundred percent (100%) interest in the instant application, U.S. Patent Application Serial No. 10/644,252, filed on August 20, 2003 for an INTERBODY FUSION DEVICE AND METHOD FOR RESTORATION OF NORMAL SPINAL ANATOMY, as evidenced by the following documents: Assignment from Thomas Zdeblick to Danek Medical, Inc., recorded at Reel 7468, Frame 0849; Assignment from Eddie Ray, III and Lawrence M. Boyd to Danek Medical, Inc., recorded at Reel 7468, Frame 0855; and Assignment from Danek Medical, Inc. to SDGI Holdings, Inc., recorded at Reel 8811, Frame 0663. Petitioner has reviewed the evidentiary documents and certifies that, to the best of Petitioner's knowledge and belief, title to the application is in the Petitioner.

Petitioner hereby disclaims the terminal part of the statutory term of any patent granted on the instant application that would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §§ 154-156 and 173 of U.S. Patent No. 5,669,909, filed

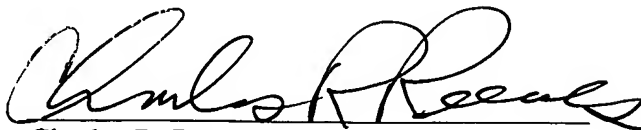
on March 30, 1995 for an INTERBODY FUSION DEVICE AND METHOD FOR RESTORATION OF NORMAL SPINAL ANATOMY. Petitioner agrees that a patent so granted on the instant application shall be enforceable only for and during such period that it and U.S. Patent No. 5,669,909 are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, Petitioner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§ 154-156 and 173 of U.S. Patent No. 5,669,909 in the event that either of such patents: expires for failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. §1.321; has all claims canceled by a reexamination certificate; is reissued; or is in any manner terminated prior to the expiration of its full statutory term.

The undersigned, Charles R. Reeves, is an attorney of record for both the instant application and the issued patent referenced above and is empowered and authorized to act on behalf of the Petitioner in making this Terminal Disclaimer.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: November 9, 2004


Charles R. Reeves
Reg. No. 28,750

**FEE TRANSMITTAL
FOR FY 2004**

Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27Total Amount of Payment (\$)**110.00****Complete if Known**

| | |
|------------------------|------------------------|
| Application Number | 10/644,252 |
| Filing Date | August 20, 2003 |
| First Named Inventor | Thomas Zdeblick et al. |
| Group Art Unit | 3731 |
| Examiner Name | Julian W. Woo |
| Attorney Docket Number | 4002-3378/PC242.38 |

METHOD OF PAYMENT☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit Account Number
23-3030Deposit Account Name
Woodard, Emhardt, Moriarty,
McNett & Henry LLP

The Commissioner is authorized to: (check all that apply)

- ☐ Charge fee(s) indicated below ☒ Credit any overpayments
- ☒ Charge any additional fee(s) during the pendency of this application, excluding the payment of issue fees
- ☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION**1. BASIC FILING FEE**

| Large Fee Code | Entity Fee (\$) | Small Fee Code | Entity Fee (\$) | Fee Description | Fee Paid |
|----------------|-----------------|----------------|-----------------|------------------------|------------------|
| 1001 | 770 | 2001 | 385 | Utility Filing Fee | |
| 1002 | 340 | 2002 | 170 | Design Filing Fee | |
| 1003 | 530 | 2003 | 265 | Plant Filing Fee | |
| 1004 | 770 | 2004 | 385 | Reissue Filing Fee | |
| 1005 | 160 | 2005 | 80 | Provisional Filing Fee | |
| SUBTOTAL (1) | | | | | (\$) 0.00 |

2. EXTRA CLAIM FEES

| Total Claims | Extra Claims | Fee From Below | Fee Paid |
|--------------------|--------------|----------------|----------|
| 32 | -32** = 0 | X 18.00 | = 0.00 |
| 9 | -3** = 0 | X 86.00 | = 0.00 |
| Multiple Dependent | | | |

| Large Entity | Small Entity | Fee Description |
|--------------|--------------|---|
| Fee Code | Fee Code | Fee (\$) |
| 1202 | 2202 | 9 Claims in excess of 20 |
| 1201 | 2201 | 43 Independent claims in excess of 3 |
| 1203 | 2203 | 145 Multiple dependent claim, if not paid |
| 1204 | 2204 | 43 **Reissue independent claims over original patent |
| 1205 | 2205 | 9 **Reissue claims in excess of 20 and over original patent |

SUBTOTAL (2) (\$)**0.00**

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

| Large Entity | | Small Entity | | Fee Description | Fee Paid |
|-------------------------|----------|--------------|----------|--|----------|
| Fee Code | Fee (\$) | Fee Code | Fee (\$) | | |
| 1051 | 130 | 2051 | 65 | Surcharge - late filing fee or oath | |
| 1052 | 50 | 2052 | 25 | Surcharge - late provisional filing fee or cover sheet. | |
| 1053 | 130 | 1053 | 130 | Non-English specification | |
| 1812 | 2,520 | 1812 | 2,520 | For filing a request for <i>ex parte</i> reexamination | |
| 1804 | 920* | 1804 | 920* | Requesting publication of SIR prior to Examiner's Action | |
| 1805 | 1,840* | 1805 | 1,840* | Requesting publication of SIR after Examiner's Action | |
| 1251 | 110 | 2251 | 55 | Extension for reply within first month | |
| 1252 | 420 | 2252 | 210 | Extension for reply within second month | |
| 1253 | 950 | 2253 | 475 | Extension for reply within third month | |
| 1254 | 1,480 | 2254 | 740 | Extension for reply within fourth month | |
| 1255 | 2,010 | 2255 | 1,005 | Extension for reply within fifth month | |
| 1401 | 330 | 2401 | 165 | Notice of Appeal | |
| 1402 | 330 | 2402 | 165 | Filing a brief in support of an appeal | |
| 1403 | 290 | 2403 | 145 | Request for oral hearing | |
| 1451 | 1,510 | 1451 | 1,510 | Petition to institute a public use proceeding | |
| 1452 | 110 | 2452 | 55 | Petition to revive - unavoidable | |
| 1453 | 1,330 | 2453 | 665 | Petition to revive - unintentional | |
| 1501 | 1,330 | 2501 | 665 | Utility issue fee (or reissue) | |
| 1502 | 480 | 2502 | 240 | Design issue fee | |
| 1503 | 640 | 2503 | 320 | Plant issue fee | |
| 1460 | 130 | 1460 | 130 | Petitions to the Commissioner | |
| 1807 | 50 | 1807 | 50 | Petitions related to provisional applications | |
| 1806 | 180 | 1806 | 180 | Submission of Information Disclosure Stmt | |
| 8021 | 40 | 8021 | 40 | Recording each patent assignment per property (times number of properties) | |
| 1809 | 770 | 2809 | 385 | Filing a submission after final rejection (37 CFR 1.129(a)) | |
| 1810 | 770 | 2810 | 385 | For each additional invention to be examined (37 CFR 1.129(b)) | |
| 1801 | 770 | 2801 | 385 | Request for Continued Examination (RCE) | |
| 1802 | 900 | 1802 | 900 | Request for expedited examination of a design application | |
| 110 Terminal Disclaimer | | | | | 110.00 |
| Other Fee (specify) | | | | | |

* Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)**110.00****SUBMITTED BY**

Name (Print/Type)

Brad A. Schepers

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45,431

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(317) 634-3456

Signature

Date

November 15, 2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038. This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.